Court No. 1

Civil Misc. Writ Petition No.298 (S/S) of 2001
(Old No.25004 of 1999).

Ram Datt Sharma Bhardwaj ..... Petitioner

Versus

U.P. Secondary Education Services Commission and three others. ..... Respondents.

Hon'ble P.C.Verma,J.

Heard learned counsel for the petitioner as well as learned Standing Counsel Sri M.M. Ghildiyal and Sri Lok Pal Singh, learned counsel for respondent No.4.

According to the petitioner, Dr. Pyare Lal was the Senior most Lecturer in the College and due to retirement of Sri Purshottam Kumar, he was to allowed to officiate as Principal on ad-hoc basis with effect from 01.7.1990 and the U.P. Higher Secondary Education Services Selection Board was requested by the District Inspector of Schools, Hardwar to fill up the vacancy. Requisition to fill up the vacancy was sent by the D.I.O.S., Hardwar in the year 1991 and with effect from 06.04.1991 a provision was inserted under the U.P. Higher Secondary Education Service Selection Boards Act, 1982. Known as Section 33-A (1-A) which provided for regularisation of Principals and Teachers working on ad-hoc basis with effect from 6.4.1991. After the enforcement of this regulation, Dr. Payre Lal stood regularised by operation of law on the post of Principal. This fact was not communicated by the D.I.O.S. to the Secretary, Education Service Selection Board.

Therefore, the Selection Board advertised the post in the year 1995. Since the vacancy was filled up substantively on account of regularisation of Dr. Pyare Lal, therefore, the commission should not have advertised the said vacancy but due to non-communication by the District Inspector of Schools, the vacancy was notified and the respondent No.4 was selected against the vacancy and was sent to join in this institution as Principal. The petitioner, who figured at serial No.3 in the seniority list at that time and who was allowed to officiate as Principal in the institution on account of retirement of Dr. Pyare Lal and resignation of Shyam Singh Nabia, filed this writ petition challenging the selection of respondent No.4 on the ground that he was selected against non-existent vacancy.

The submission made by the learned counsel for the petitioner could not be refuted by the respondents. Thus, the selection of the respondent No.4 is liable to be set aside. Since the petitioner was serving in the institution and was regularly selected candidate by the Commission. Commission wrongly allocated the respondent No.4 the same institution for the lack of knowledge about the fact of non-existence of vacancy. Therefore, for the lapse of the Commission, the respondent No4 for the lapse of the Commission, the respondent No.4 cannot be made to suffer and some adjustment is needed to protect the interest of respondent No.4.

Therefore, the Director (Education), Uttaranchal is directed that in order to adjust the respondent No.4, transfer him to any institution of the same status, where the vacancy is available,

within a period of one month from the date of production of certified copy of this order and after the transfer of the respondent No.4, in case petitioner is senior most Lecturer and has not retired yet, he shall be posted as Principal.

Learned counsel for the parties agree that the petition may be disposed of finally in accordance with the aforesaid terms and conditions. Therefore, the petition is disposed of finally in accordance with the aforesaid terms and conditions.

(P.C. Verma, J.)

15.10.2001
P.Singh